

OPINION NO. 88-052**Syllabus:**

1. A court order issued under R.C. 3113.21(D)(1)(c) does not require an employer of a child support obligor who is subject to a wage withholding order to hold for thirty days lump-sum payments made to the obligor-employee in lieu of vacation. Vacation payments may be required to be withheld, however, pursuant to court orders issued under R.C. 3113.21(D)(4) or other appropriate provisions.
2. The employer of a child support obligor must obey any order imposed upon him by a court as long as that court has issued an order within its jurisdiction and power. (1981 Op. Att'y Gen. No. 81-053 at 2-210, approved and followed.)

To: Patricia Barry, Director, Ohio Department of Human Services, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 6, 1988

I have before me your request for my opinion concerning R.C. 3113.21. I have rephrased your specific questions as follows:

1. Does R.C. 3113.21(D)(1)(c) require the employer of a child support obligor who is subject to a wage withholding order to hold for thirty days a lump-sum payment made to the obligor-employee in lieu of vacation?
2. Does R.C. 3113.21(D)(1)(c) require the employer of a child support obligor to notify the court of the lump-sum payments referred to in R.C. 3113.21(D)(1)(c) if the child support obligor owes child support pursuant to an order issued before December 1, 1986?

R.C. 3113.21 authorizes a court to order employers and others to withhold payments to be made to child support obligors in order to ensure payment of child support obligations. R.C. 3113.21(D) requires any court issuing a wage withholding order to issue other orders as necessary to insure the payment of the support and arrearages required, and provides in pertinent part:

(D) If a court is required under division (B) or (C) of this section or any other section of the Revised Code to issue one or more orders described in this division, *the court shall issue* one or more of the following types of orders to pay the support required under the support order and also, if required by either of those divisions, any other section of the Revised Code, or the court, to pay any arrearages. (Emphasis added.)

R.C. 3113.21(D)(1) specifies the type of order to be issued to an obligor's employer if that obligor is employed; and requires the court to impose certain obligations on that employer, including those contained in R.C. 3113.21(D)(1)(c):

(1)....

The order also shall require the employer to do all of the following:

....

(c) Immediately notify the bureau of support of any lump-sum payments of any kind of five hundred dollars or more that are to be paid to the obligor, hold the lump-sum payments of five hundred dollars or more for thirty days after the date on which the lump-sum payments would otherwise have been paid to the obligor, *if the lump-sum payments are workers' compensation benefits, severance pay, sick leave, lump-sum payments of retirement benefits or contributions, annual bonuses, or profit sharing payments or distributions*, and, upon order of the court, pay any specified amount of the lump-sum payment to the bureau of support. (Emphasis added.)

Thus, if the court is required to issue the type of order authorized by R.C. 3113.21(D)(1), the court order must require employers to withhold lump-sum payments for thirty days "if the lump-sum payments are workers' compensation benefits, severance pay, sick leave, lump-sum payments of retirement benefits or contributions, annual bonuses, or profit sharing payments or distributions." You wish to know whether "lump-sum payments made to the employee in lieu of vacation" are included in the types of lump-sum payments that must be withheld for thirty days pursuant to the court order authorized by R.C. 3113.21(D)(1)(c). I see no reason to conclude that R.C. 3113.21(D)(1)(c) requires courts to order employers to withhold for thirty days lump-sum payments made in lieu of vacation. The types of lump-sum payments that the court's order will require employers to withhold for thirty days are named in an exclusive list that does not include "payments made in lieu of vacation." It is an accepted rule of statutory construction that the naming of a class implicitly excludes those not named. *See, e.g., State ex rel. Cunningham v. Industrial Commission*, 30 Ohio St. 3d 73, 76, 506 N.E.2d 1179, 1181 (1987). R.C. 3113.21(D)(1)(c) does not include "vacation payments" in its list of the types of lump-sum payments that courts can order employers to withhold for thirty days. Therefore, it can be presumed that an order issued pursuant to R.C. 3113.21(D)(1)(c) does *not* require an employer of a child support obligor to withhold lump-sum vacation payments for thirty days.

In contrast to the language it used in R.C. 3113.21(D)(1)(c), in R.C. 3113.21(D)(4) the General Assembly used a non-exclusive list to name the types of income that can be subject to withholding orders under that provision:

If the court or bureau of support determines that the obligor is receiving any form of income, *including, but not limited to*, disability or sick pay, insurance proceeds, lottery prize awards, federal, state, or local government benefits to the extent that the benefits can be withheld or deducted under any law governing the benefits, any form of trust fund or endowment fund, *vacation pay*, commissions and draws against commissions that are paid on a regular basis, bonuses or profit-sharing payments or distributions, or any lump-sum payments, *the court may issue an order* requiring the person who pays or otherwise distributes the income to the obligor to withhold from the obligor's income a specified amount for support in satisfaction of the support order.... (Emphasis added.)

The fact that the General Assembly listed vacation pay in R.C. 3113.21(D)(4) indicates that it was aware of the possibility of vacation payments being made to child support obligors, and of the possibility of ordering those payments to be withheld. I therefore conclude that the General Assembly intentionally chose not to include lump-sum vacation payments in the list of payments required to be subject to a thirty-day withholding order issued pursuant to R.C. 3113.21(D)(1)(c). Accordingly, I conclude that R.C. 3113.21(D)(1)(c) does not require a court to order the employer of a child support obligor to withhold for thirty days payments made to that obligor in lieu of vacation. I recognize, however, that vacation payments may be subject to withholding pursuant to orders issued under R.C. 3113.21(D)(4) or other relevant provisions.

I turn now to your second question, in which you ask whether R.C. 3113.21(D)(1)(c) obligates the employer of a child support obligor to notify the court of lump-sum payments to the obligor-employee pursuant to an order issued prior to December 1, 1986. You note that R.C. 3113.21(C) provides that the court shall hold a hearing to discover necessary information about child support obligors when it issues a support order *on or after December 1, 1986*. R.C. 3113.21(C) also provides that, after the court conducts a hearing in conjunction with the issuance of a child support order issued on or after December 1, 1986, it "shall issue one or more of the types of orders described in [R.C. 3113.21(D)]...." R.C. 3113.21(D) requires a court to issue one or more of the orders described in that section, including the type of order described in R.C. 3113.21(D)(1)(c).

As I have already noted, the type of court order described in R.C. 3113.21(D)(1)(c) would require an employer of an obligor to withhold certain types of lump-sum payments "for thirty days after the date on which the lump-sum payments would otherwise have been paid to the obligor." R.C. 3113.21(D)(1)(c) does not, *in itself*, impose a duty on the employer of a child support obligor. Rather, it describes the type of duty that *a court* must impose upon the employer of a child support obligor in certain situations. Of course, the employer is required to obey any court order imposed upon it that is within the jurisdiction and power of the issuing court. *See generally* 1986 Op. Att'y Gen. No. 86-034 at 2-174; *State ex rel. Bell v. Dota*, 168 Ohio St. 315, 154 N.E.2d 634 (1958). *See also* 1981 Op. Att'y Gen. No. 81-053 at 2-210 ("where a court has issued an order within its jurisdiction and power, disobedience of such order is contempt").

Thus, it is not within my authority to decide whether a particular employer may be obligated to notify the court of lump-sum payments to child support obligors. I note, however, that an employer is obligated to notify the court of the lump-sum payments if that employer is subject to a valid court order requiring him to notify the court of those payments. *See, e.g.*, Op. No. 81-053 at 2-210.

Accordingly, it is my opinion and you are advised:

1. A court order issued under R.C. 3113.21(D)(1)(c) does not require an employer of a child support obligor who is subject to a wage withholding order to hold for thirty days lump-sum payments made to the obligor-employee in lieu of vacation. Vacation payments may be required to be withheld, however, pursuant to court orders issued under R.C. 3113.21(D)(4) or other appropriate provisions.
2. The employer of a child support obligor must obey any order imposed upon him by a court as long as that court has issued an order within its jurisdiction and power. (1981 Op. Att'y Gen. No. 81-053 at 2-210, approved and followed.)